

## REMARKS

The Applicant respectfully requests reconsideration in view of the following remarks. Claims 1, 13, 17, 21, and 28 have been amended. No claims have been added or cancelled. Accordingly, claims 1-39 remain pending in the application.

### **I. Rejection of Claims Under 35 U.S.C. § 112**

Claims 1-12 and 34-35 stand rejected under 35 U.S.C § 112, first paragraph as failing to comply with the written description requirement. The Applicant respectfully disagrees with the above claim rejections for the following reasons.

Claims 1-12 and 34-35 stand rejected under 35 U.S.C § 112, first paragraph as failing to comply with the written description requirement. The Applicant respectfully disagrees with the above claim rejections for the following reasons. MPEP § 2163.04 states that “[a] description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption.” MPEP § 2163.04 citing In re Marzocchi, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). “The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant’s disclosure a description of the invention defined by the claims.” Id. citing In re Wertheim, 541 F.2d 257, 262, 191 USPQ 90, 97 (CCPA 1976). The Examiner must “[e]stablish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed.” MPEP § 2163.04 (I).

Claim 1 includes “a communication interface coupled between the launch logic and the control logic to enable the launch logic to obtain status of each of the Java processes and enable the control logic to access the status in a shared memory.” The Examiner argues that claim 1 discloses the launch logic and the control logic using the same communication interface while the Specification at paragraphs [0017]-[0020] discloses the use of different communication interfaces by the launch logic and the control logic. See Office Action, Page 2-3. Specifically, the Examiner argues that since these sections describe one embodiment in which a Java native interface is used with the launch logic and another embodiment is which a C-library interface is used for the control logic, the launch logic and control logic must use different interfaces. See Id. However, these sections describe separate embodiments. There is no language in the Specification that requires the launch logic to use a JNI and the control logic to use a C-library

interface. Conversely, there is no language which prevents the launch logic from using a C-library interface and the control logic from using a JNI. Instead these sections provide example implementations of the communication interface. Therefore, the Specification does not disclose the use of different communication interfaces by the launch logic and the control logic as argued by the Examiner. Thus, the Examiner has failed to establish by a preponderance of evidence that the Specification does not disclose to a person skilled in the art that the Applicant had possession of the claimed invention at the time the application was filed.

MPEP § 2163.04 states that a disclosure is presumed adequate unless proven otherwise by a preponderance of the evidence. The justification for the rejection for the reasons set forth above fails to meet this burden, thus, the presumption of adequacy has not been rebutted. Therefore, the subject matter contained in claim 1 is presumed to be clearly described in the Specification in such a way as to reasonably convey to one skilled in the relevant art that the Applicant had possession of the claimed invention at the time the application was filed because the Examiner has not provided a suitable argument to the contrary. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of the objection of claim 1.

The Examiner has rejected claims 2-12 and 34-35 for depending upon rejected claim 1. However, as discussed above in the Applicant's argument over the 35 U.S.C. § 112 rejection, the rejection of claim 1 should be properly withdrawn. Thus, claims 2-12 and 34-35 no longer depend on a rejected claim. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 2-12 and 34-35.

## **II. Claims Rejected Under 35 U.S.C. § 103**

Claims 1-39 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 7,302,609 issued to Matena et al. (hereinafter "Matena") in view of "Implementation of a Portable Software DSM in Java" by Sohda et al. (hereinafter "Sohda"). The Applicant respectfully disagrees with the above claim rejections for the following reasons.

To determine obviousness of a claim: (1) factual findings must be made under the factors set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966); and (2) the analysis supporting the rejection under 35 U.S.C. § 103 should be made explicit and there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. See MPEP §§ 2141(II), 2141(III), and 2142; KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396; see e.g., MPEP § 2143 (providing a number of rationales which are

consistent with the proper “functional approach” to the determination of obviousness as laid down in Graham).

In regard to claim 1, this claim has been amended to include “a control logic to start each instance by initiating a launch logic for each of the server nodes, the launch logic, when initiated, to execute Java processes in each respective server node, the control logic to reassign a failed Java process previously running on a first server node to a second server node” (emphasis added). These limitations are supported, for example, by paragraph [0026] of the Specification. The Applicant believes that Matena in view of Sohda does not disclose these elements of amended claim 1. Matena discloses restarting a node after a node failure. See Matena, Paragraph [0213]. Thus, in Matena failed processes are restarted on the same node. See Id. However, Matena fails to disclose reassigning failed processes from a first server node to a second server node. Moreover, after reviewing Sohda the Applicant has been unable to locate any sections therein which cure the deficiencies of Matena. Thus, the combination of Matena and Sohda do not teach or suggest each element of claim 1. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of this claim.

In regard to amended claims 13, 17, 21, and 28, these claims include elements analogous to those of claim 1. For at least the reason discussed above in claim 1, the Applicant submits that the combination of Matena and Sohda does not teach or suggest these elements of claims 13, 17, 21, and 28. Thus, the reference does not disclose each element of these claims. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims.

Claims 2-12, 14-16, 18-20, 22-27, and 29-39 depend from independent claims 1, 13, 17, 21, and 28, respectively, and incorporate the limitations thereof. Thus, at least for the reasons discussed above in regard to the independent claims 1, 13, 17, 21, and 28, the combination of Matena and Sohda does not teach or suggest each element of the dependent claims. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims.

### **CONCLUSION**

In view of the foregoing, it is believed that all claims now pending, namely claims 1-39, patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207 3800. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666.

### **PETITION FOR EXTENSION OF TIME**

Per 37 C.F.R. 1.136(a) and in connection with the Office Action mailed on July 9, 2008, Applicant respectfully petitions Commissioner for a one (1) month extension of time, extending the period for response to November 9, 2008. The amount of \$130.00 to cover the petition filing fee for a 37 C.F.R. 1.17(a)(1) large entity will be charged to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

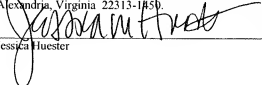
Dated: 10/16, 2008

  
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#### **CERTIFICATE OF MAILING:**

I hereby certify that this paper is being transmitted online via EFS Web to the Patent and Trademark Office, Commissioner for Patents, Post Office Box 1450, Alexandria, Virginia 22313-1450.

  
Jessica Huester Date 10/16/08